

# Los Angeles Times

## A big tax blunder

**Small-business owners are owed millions in security deposits they paid the state.**

By Michelle Steel

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At a time when state budget problems are causing widespread pain, here's one more piece of bad news: California owes millions of dollars to small-business owners. The Board of Equalization, the ultimate authority on California tax law, requires roughly 30,000 businesses to pay a returnable tax security deposit. However, a major agency oversight has delayed tax refunds for thousands of small businesses.

Under state law, certain businesses can be required to post and maintain a tax security deposit with the state's sales-tax agency for their first three years of operation. The security deposits, which range from \$2,000 to \$50,000, act as collateral against any potential tax liabilities. State law requires the release of security deposits for businesses with perfect tax payment records for three years.

After receiving a call from a San Diego business owner who paid the security deposit, I launched an internal investigation into the state board's refund procedures and discovered a systemic problem at the agency. Out of California's \$436 million in tax security deposits, more than \$38.8 million in refunds are eligible for release but are being held by the agency. In my district alone, which represents one-fourth of the state, security deposits worth more than \$4 million were improperly withheld from more than 600 businesses. Some deposits were withheld for more than four years.

Why is this happening? Unlike that income tax refund your family anticipates and budgets, tax security deposits are held for so long that many small-business owners forget they exist -- and don't remember when their refund is due. The tax security deposit restrictions are buried in the mountain of forms and paperwork in a seller's permit application. New businesses, especially those with nonnative English-speaking owners, often fail to understand the deposit's terms and conditions.

But a small-business owner's right to that refund shouldn't be dependent on his or her good memory. The Board of Equalization knows the names and phone numbers of every affected business because these businesses continue to pay their taxes. The agency should be taking proactive steps to get refunds to small businesses, but our investigation indicates that staffers do not clearly understand that they are required by law to get these refunds back on a timely basis. In one case, the agency contacted an Orange County businessman a year after his refund was due -- not to refund his deposit but to audit his business. Even after a flawless audit, the agency still failed to return his tax security deposit.

California's multimillion-dollar mistake has serious consequences. First, the security-deposit

burden is borne primarily by small businesses. Major corporations are largely unaffected because they have operated longer than three years and can float a security bond in place of cash.

This tax oversight also reflects an endemic problem in state government. California's perpetual budget deficits, including next year's projected \$14.5-billion shortfall, pressure state bureaucrats to bring in as much revenue as possible and to make collection a priority over fairness. Consider the scenario had the tables been turned and the taxpayer owed the state money. On the first day of delinquency, the taxpayer would owe an immediate 10% penalty plus 11% annualized interest for all tardy taxes. Don't expect the state to offer reciprocal generosity.

The Board of Equalization 3rd District has already taken steps to help taxpayers get their money back. All security deposit accounts in my district are under review, and agency staff in the future will review all eligible security deposit accounts on a monthly basis.

On a statewide level, more than \$5.5 million has been returned to small businesses, but the Board of Equalization can and should do more. The tax agency should immediately release all eligible tax security deposits, investigate the systemic flaws in tax-refund procedures and apply this monthly review process statewide. Until then, California businesses can contact a tax help line at (866) 910-9558 to check whether they are owed a tax refund.

***Michelle Steel is a Board of Equalization member representing the 3rd District, which includes a portion of Los Angeles.***